



Comptroller General  
of the United States

Washington, D.C. 20548

K. Riback 146-840

## Decision

**Matter of:** D.M. Potts Corporation

**File:** B-247403

**Date:** May 29, 1992

David M. Potts for the protester,  
Marilyn Walter Johnson, Esq., and Paul M. Fisher, Esq.,  
Department of the Navy, for the agency.  
Katherine I. Riback, Esq., and John Brosnan, Esq., Office of  
the General Counsel, GAO, participated in the preparation of  
the decision.

### DIGEST

Use of competitive negotiation rather than sealed bidding procedures is proper where the agency, based on performance problems encountered on prior contract, reasonably determines that discussions might be necessary and that award must be based on technical evaluation factors as well as price.

### DECISION

D.M. Potts Corporation protests the Department of the Navy's use of competitive negotiations in soliciting offers for maintenance of the grounds at the Marine Corps Air Station, Beaufort, South Carolina, under request for proposals (RFP) No. N62467-92-R-0587. Potts, the incumbent under the prior contract for these services, contends that the Navy is required to use sealed bidding procedures for this particular requirement.<sup>1</sup>

We deny the protest.

The solicitation specifies that the contractor shall furnish all labor, supervision, equipment, and materials, and requires that separate price and technical proposals be submitted. As amended, the solicitation sets forth the following three technical evaluation factors:

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<sup>1</sup>Subsequent to this protest the agency accepted and evaluated offers under the RFP. In accordance with a determination under 31 U.S.C. § 3553(c) (1988), the agency made an award to R.W. Browning notwithstanding the pending protest.

- a. Proposer's Overall Experience
- b. Functional Area Proposed Procedures
- c. Resources for Proposed Procedures

Price was also an evaluation factor. The solicitation further specified that the three technical factors were to be of equal importance and that the cumulative weight of the three technical factors was equal to price. Further, in addition to unit and extended prices for the various tasks, offerors were required to provide "supplemental pricing information" which was to consist of a breakdown of material and labor costs as well as data concerning the staff hours to be used.

Under the Competition in Contracting Act of 1984 (CICA), contracting agencies are required to determine the competitive procedure--competitive proposals (negotiation) or sealed bidding--that is best suited to the circumstances of a given procurement. 10 U.S.C. § 2304(a)(1) (1988); Military Base Mgmt., Inc., 66 Comp. Gen. 179 (1986), 86-2 CPD ¶ 720. CICA does provide, however, that sealed bidding is to be used if (1) time permits; (2) award will be based on price; (3) discussions are not necessary; and (4) more than one bid is expected. 10 U.S.C. § 2304(a)(2)(A). Thus, an agency need not solicit sealed bids if it reasonably determines that it must evaluate factors other than price, F&H Mfg. Corp., B-244997, Dec. 6, 1991, 91-2 CPD ¶ 520, or that it will be necessary to conduct discussions with responding sources about their offers. TLC Sys. and King-Fisher Co., B-227842; B-227842.2, Oct. 6, 1987, 87-2 CPD ¶ 341.

Here, the Navy reports that there have been substantial problems on the prior contract due to an inadequate and inexperienced workforce that resulted in poor performance, damage to government equipment and facilities, and a serious accident due to contractor operator error. The agency reports that the key to avoiding these problems is adequate staffing and to assure that such staffing will be provided, it must evaluate proposals on factors other than price and hold discussions to make certain that contractors understand the requirements.


Potts argues that the grounds maintenance services required by the RFP are not complex and are sufficiently standardized for the agency to use sealed bidding procedures. Further, Potts states that discussions are not necessary, and that the preproposal conference and site visit provided for in the solicitation will enable firms to fully understand the government's needs. Finally, according to the protester,

any questions of responsibility can be resolved through the use of a preaward survey.<sup>2</sup>

We think, in light of the agency's experience under the prior contract, that it reasonably concluded that its needs warrant a comparative evaluation of the offerors' overall experience and proposed resources, see F&H Mfg. Corp., supra, where we recognize that an agency could reasonably decide to evaluate factors other than price to avoid performance problems encountered on prior contracts, and that discussions might well be needed. See Military Servs., Inc. of Georgia, B-221384, Apr. 30, 1986, 86-1 CPD ¶ 423. The preproposal conference and site visit may enable firms to understand the agency's needs, but will not provide the government with a vehicle to determine that offerors fully understand the requirements. See The Saxon Corp., B-221054, Mar. 6, 1986, 86-1 CPD ¶ 225.

Accordingly, we have no basis upon which to object to the agency's use of negotiation rather than sealed bidding.

The protest is denied.

  
James F. Hinchman  
General Counsel

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<sup>2</sup>For the first time in its comments on the agency report, Potts complains that the solicitation statement concerning the relative weights to be assigned the evaluation criteria are unclear and that the use of these criteria is intended to circumvent the Small Business Administration certificate of competency procedures. We will not consider these matters because they concern alleged solicitation improprieties and were not raised before the February 10, 1992, time set for the receipt of initial proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1992).